



SB 527/HB 354 - SUPPORT
Susaanti Follingstad
Maryland Against ICE Detention
sfolling@verizon.net 301-251-0139

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Criminal Procedure - Probation Before Judgment - Facts Justifying a Finding of Guilt and Suspension of Sentence

Senate Judicial Proceedings Committee/House Judiciary Committee
February 23, 2021

Dear Chair Clippinger and Members of the Judiciary Committee:

As a Maryland resident for 46 years and on behalf of Maryland Against ICE Detention (MDAID), I adamantly support SB 527/HB 354 and urge this committee to report favorably on this legislation. MDAID is a statewide coalition of organizations and individuals striving to stop immigration detention as well as systems that contribute to detention and deportation. We are made up of over 60 organizations and over 200,000 individual members and members of those organizations.

The passage and implementation SB 527/HB 354 is important to our mission of stopping detention and deportation of immigrants, even more so during this pandemic, which detention worsens, increasing the hazard to those detained and to surrounding communities.

Currently, if a judge believes a charge warrants it, and the prosecution and defense agree, the judge can impose Probation Before Judgment (PBJ) and if the defendant completes the term imposed without problems, there is no conviction on their record. Unfortunately, under federal law this is still considered a conviction and thus for non-citizens (including green card holders), it can result in issues ranging from citizenship denial, to detention by ICE and even deportation, all related to what the justice system saw as a minor offense.

I've used PBJ in traffic court, and avoided points and increased insurance rates as a result, while only paying a fine and completing the probation period successfully.

Meanwhile, non-citizens are often led to believe (sometimes by attorneys ignorant of how federal law views a PBJ) that a PBJ will not have any major consequences if they successfully complete the probation period. However, actually under federal law a non-citizen would face dire consequences, including deportation, even for a similar offense to mine. (Another minor offense that can be appropriate for a PBJ is driving without a license. Until SB 234/HB 23 gets enacted, ICE will continue use of MVA data to target undocumented immigrants for detention and deportation which currently discourages those immigrants from getting licenses.)

Because of this inequity, attorneys who do understand the potential consequences advise clients to take the risk of a full trial, rather than rely on a PBJ. In addition to the added risks and costs for these non-citizens, this burdens the Maryland courts and prosecutors with unnecessary trials for offenses that could otherwise be assigned a PBJ.

This clearly is not the intent of the Maryland legislature and is unjust. SB 527/HB 354 will make minor changes to the law which would ensure the PBJ will no longer be considered a conviction under federal law and thus reduce the harm that ICE and the immigration system is able to inflict upon our non-citizen neighbors, while also reducing the costs and burdens on the criminal justice system.

MDAID urges a favorable report on SB 527/HB 354.